

Members

Sen. Brent Steele, Chairperson
Sen. Brent Waltz
Sen. James Arnold
Sen. Greg Taylor
Rep. Vanessa Summers
Rep. John Day
Rep. David Frizzell
Rep. David Yarde
Gregory A. DeVries
Judge Marianne Vorhees
Robert Bishop
Bruce Pennamped



CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

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Authority: IC 33-24-11-1

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MEETING MINUTES¹

Meeting Date: October 30, 2009
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Sen. Brent Steele, Chairperson; Sen. Brent Waltz; Sen. James Arnold; Rep. Vanessa Summers; Rep. John Day; Rep. David Frizzell; Rep. David Yarde; Gregory A. DeVries; Judge Marianne Vorhees; Robert Bishop.

Members Absent: Sen. Greg Taylor; Bruce Pennamped.

Senator Brent Steele, Chairperson, called the fourth meeting of the Indiana Child Custody and Support Advisory Committee (Committee) to order at 10:12 A.M. The Committee members introduced themselves.

Child support legislative gap analysis

_____ Ms. Cynthia Longest, Deputy Director of the Child Support Bureau, Department of

¹ Exhibits and other materials referenced in these minutes can be obtained electronically by requesting copies at licrequests@iga.in.gov Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Child Services (Department), provided to Committee members a handout² on information regarding a legislative "gap" analysis. Her testimony included the following:

- The Department undertook a project to compare Indiana child support statutes with federal child support requirements because Indiana is not doing as well as other states in certain performance categories. The project involved comparing Indiana child support statutes with the federal child support requirements to determine in what areas the Indiana statutes could be clearer or were not in compliance with the federal statutes.
- The five federally mandated performance measures include: (1) paternity; (2) support order establishments; (3) current collection; (4) cases paying on arrears; and (5) cost effectiveness.
- Indiana ranks forty-first in support order establishment and current collections and the Department is looking at improving performance in these measures.
- The Department identified the following areas to address in 2010 legislation:

(1) Income withholding. The Indiana statutes do not specifically require income withholding in all cases. Income withholding should be ordered in every case unless alternative measures are ordered. The Indiana statutes also do not protect from civil liability an employer who complies with an income withholding order.

(2) License suspension. There are a few areas in which other states have license suspension for failure to pay child support that Indiana does not. The goal of license suspension is not to suspend a license but for the noncustodial parent to regularly pay child support, or if the noncustodial parent is unable to pay child support, contact the IV-D agency to discuss payment options.

(3) Medical support. The language concerning medical support needs to be tightened up and should include language regarding the custodial and the noncustodial parent.

(4) Other provisions. The language in locate related areas needs to be strengthened to make the IV-D agencies' authority for accessing information from other government and private entities much clearer.

In response to a question from Senator Steele, Ms. Longest discussed the health premium worksheet in the amended Indiana Child Support Rules and Guidelines.

Consideration of drafts of proposed legislation

Preliminary Draft 3213³

Preliminary Draft (PD) 3213 would amend the grandparent visitation statutes as follows:

² Exhibit 1

³ Exhibit 2

(1) Allows great-grandparents to seek visitation rights with their great-grandchildren under the same circumstances that grandparents may seek visitation with their grandchildren.

(2) Allows a grandparent or great-grandparent to seek visitation if the grandparent or great-grandparent has had meaningful contact with the child but, as a result of an estrangement between the parent of the child and the grandparent or great-grandparent, the parent of the child terminated the child's visits with the grandparent or great-grandparent.

(3) Establishes factors for the court to consider in determining whether granting a grandparent or great-grandparent visitation rights is in the best interests of the child.

____ Senator Steele explained that PD 3213 concerning grandparent and great-grandparent visitation is a little different than his bill from last year in that PD 3213 contains factors for a court to consider in determining the best interests of the child in a grandparent visitation case. In response to a question from Representative Vanessa Summers, a Committee member, Senator Steele indicated that a grandparent would have to prove that the grandparent had had meaningful contact with the child by providing evidence, such as witnesses, pictures, etc. Judge Marianne Vorhees, a Committee member, expressed grave concerns with PD 3213. She indicated that she believed the changes in PD 3213 that expand the circumstances under which a grandparent may seek visitation would lead to more litigation and had constitutional issues.

____ Mr. Gregory DeVries, a Committee member, stated that the Committee should be cautious about letting a court override or decide for parents what is in the best interests of their child. Representative Summers said that she knows grandparents and great-grandparents who have had grandchildren and great-grandchildren dropped off at their doorsteps and took full responsibility for the grandchildren or great-grandchildren. She stated that there is a lot of kinship care occurring. Mr. Robert Bishop, a Committee member, noted his concern that the changes in PD 3213 create a slippery slope and asked whether, if Indiana law is changed to allow grandparents and great-grandparents to seek visitation under broader conditions, should other people be allowed to seek visitation with a child as well.

Representative John Day, a Committee member, made a motion to amend PD 3213 to add the wishes of a parent or parents to the factors the court must consider in determining the best interests of the child under the grandparent visitation provisions. The amendment was approved by consent of the Committee members. Judge Vorhees and Mr. DeVries expressed concern that PD 3213 goes too far in granting grandparents rights. Mr. Bishop suggested allowing courts to order attorney fees in grandparent visitation cases. The Committee approved PD 3213 in a 8-2 roll call vote.

Preliminary Draft 3275⁴

Preliminary Draft (PD) 3275 would amend a paternity affidavit statute to provide that evidence that a man is excluded as the biological father of a child based on a genetic test that indicates that the man is not the child's biological father constitutes a material mistake of fact that existed in the execution of the paternity affidavit.

⁴ Exhibit 3

Senator Steele explained PD 3275 concerning rescission of paternity affidavits. The Committee discussed whether the change in PD 3275 should require the father to obtain the genetic test within a certain number of years for the evidence of the genetic test indicating the man is not the biological father of the child to constitute a material mistake of fact. The Committee also discussed whether this would apply in cases of divorce and what information a man is given concerning rescinding a paternity affidavit.

Mr. Corey Ealy, Indiana State Department of Health, read a copy of a paternity affidavit that is provided to a man in a hospital after the birth of a child. In response to a question from Representative David Frizzell, a Committee member, about whether hospital personnel explain to the man his rights and responsibilities when he signs a paternity affidavit in a hospital, Mr. Ealy stated that each hospital has its own business practices.

Mr. John Chavis indicated that he would like to see some kind of DNA testing. Senator Steele expressed concerns with requiring DNA testing when possibly a large percentage of the time DNA testing would not be necessary. Ms. Longest indicated that the Department is looking into the paternity affidavit process and reviewing other state statutes regarding DNA testing and paternity affidavits.

In response to a question from Representative David Yarde, a Committee member, Mr. Ealy stated that when he was in the military in 1988, he was sent a paternity affidavit and was required to sign it in order to avoid being served a subpoena to appear in court. He noted that he was providing this information outside of his role as a representative of the Indiana State Department of Health. The Committee approved PD 3275 in a 10-0 roll call vote.

Other Committee business

Mr. Michael Red testified that he was an attorney but did not practice family law. He discussed his situation as a noncustodial parent of two boys who had not had parenting time with his boys for almost a year because his ex-wife had started proceedings to oppose parenting time. He discussed the aspects of law that he felt made it too easy for a custodial parent to oppose a noncustodial parent's parenting time with a child. Specifically, he expressed concerns with the use of "might" in IC 31-14-14-1 and IC 31-17-4-1 and that there was no definition or explanation of what constitutes endangering the child's physical health or significantly impairing the child's emotional development. He stated that these provisions and others in the family law statutes provide an opportunity for a parent to continually litigate matters. He said that HB 1511, which passed in the 2009 legislative session, made good changes in restricting a parent from exercising parenting time for good reasons and that there should be good reasons before a custodial parent can restrict parenting time of the noncustodial parent. He suggested that IC 31-14-14-1 and IC 31-17-4-1 be amended to provide that a court may not restrict parenting time unless there is clear and convincing evidence that parenting time would endanger the child's physical health or significantly impair the child's emotional development. The Committee discussed the age of Mr. Red's children and whether the wishes of a child who had attained a certain age were given more consideration.

In response to questions from Representative Summers, Judge Vorhees and Mr. Bishop indicated that parenting classes are not required in statute, but are instead required by local rule in certain counties.

The Committee members approved a recommendation to include in the final report that a clear and convincing standard be added in IC 31-14-14-1 and IC 31-17-4-1 in a 10-0 roll call vote. The Committee discussed that making this recommendation and a legislator

possibly putting this in bill form may bring people to the table to discuss this issue.

Mr. Daniel Frick provided testimony to the Committee concerning child support and stated that a custodial parent has a prosecutor working to obtain child support for the custodial parent but there is no one working for the noncustodial parent unless the noncustodial parent hires a private attorney. He also discussed needed changes regarding serving of papers for court dates. Mr. Frick provided his testimony in writing.⁵

____ Ms. Sharon Huehls described the situation her son experienced in his divorce. She stated that her son had to agree to give his ex-wife half of his retirement savings and more child support than required under the Indiana Child Support Rules and Guidelines in order to have joint custody of his children with his ex-wife. She indicated that the default should be joint custody. Judge Vorhees discussed establishing a presumption for joint parenting. She also noted that each judge brings his or her own experience into the courtroom.

The Committee noted that a judge can consider recommendations and evaluations from third parties in helping the judge to determine the child's wishes and the best interests of the child, including recommendations and evaluations from custody evaluators, guardian ad litem, and court appointed special advocates. Judge Vorhees also indicated that judges can request to speak with a child privately in chambers to ascertain the child's wishes.

Mr. Robert Monday from the Children's Rights Council stated that there is a gender bias in the paternity affidavit statute, which provides that if a paternity affidavit is executed under IC 16-37-2-2.1 the mother has sole legal custody of a child unless another custody determination is made by a court in a proceeding under IC 31-14. Mr. Monday asked the Committee to make a recommendation to change the language IC 16-37-2-2.1 to provide the mother and father have joint legal custody when a paternity affidavit is executed under IC 16-37-2-2.1. In response to a question from Senator Steele about deleting the provision that provides the mother has sole legal custody, Ms. Longest indicated that she would look into this issue.

The Committee approved, in a 9-0 roll call vote, a recommendation to remove the language in IC 16-37-2-2.1 that provides that a mother has sole legal custody and insert language that would provide that the mother of the child has primary physical custody subject to the father having reasonable parenting time in accordance with the Indiana Parenting Time Guidelines unless another custody determination is made by a court in a proceeding under IC 31-14.

Consideration of final report

The Committee approved the final report in a 9-0 roll call vote.

Senator Steele adjourned the meeting at 12:40 P.M.

⁵ Exhibit 4